

922 KAR 1:510. Authorization for disclosure of protection and permanency records.

RELATES TO: KRS 61.870-61.884, 45 C.F.R. 160.103, 164.501, 164.502, 164.508, 164.512, 164.524

STATUTORY AUTHORITY: KRS 61.876, 194A.050(1), 194B.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.876 authorizes the cabinet to adopt administrative regulations regarding protection and disclosure of public records in conformity with KRS 61.870 to 61.884. KRS 194B.060(1) authorizes the secretary to promulgate administrative regulations for protection and disclosure of confidential records and reports of the cabinet's clients or former clients. This administrative regulation establishes the authorization requirements for disclosure of Protection and Permanency records.

Section 1. Definitions. (1) "Disclosure" is defined by 45 C.F.R. 160.103.

(2) "Health information" is defined by 45 C.F.R. 160.103.

(3) "Official custodian" is defined by KRS 61.870(5).

(4) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.

(5) "Protection and permanency records" means a public record as defined in KRS 61.870(2) and that is prepared, owned, used, in the possession of, or retained by departmental staff providing protection and permanency services.

Section 2. General. The cabinet shall comply with KRS 61.870 to 61.884 and 45 C.F.R. Parts 160 and 164 in processing requests for disclosure of protection and permanency records.

Section 3. Authorization for Disclosure of Protection and Permanency Records. (1) If a person submits a request for disclosure of protection and permanency records that include health information or protected health information, the official custodian shall require the person to authorize such a disclosure:

(a) By completing and signing a "DPP-010, Open Records Request" in accordance with KRS 61.872(2), if the written request is insufficient to locate and retrieve the records requested;

(b) In accordance with 45 C.F.R. 164.508(c), by completing and signing a:

1. "CHFS-305, Authorization for Disclosure of Protected Health Information", if requesting health information other than psychotherapy records; or

2. "CHFS-305A, Authorization for Disclosure of Psychotherapy Information ", where applicable; and

(c) By returning the appropriate forms in paragraphs (a) and (b) of this subsection to the official custodian of protection and permanency records:

1. Between the hours of 8 a.m. and 4:30 p.m. to the Cabinet for Health and Family Services, Department of Community Based Services, Records Management Section, 275 East Main Street, Section 3E-G, Frankfort, Kentucky 40621; or

2. By mail, to the address specified in subparagraph 1 of this paragraph.

(2) If a person submits a request for protection and permanency records that does not include health information or protected health information, the official custodian shall require the person to:

(a) Complete and sign an "Open Records Request" as specified in subsection (1)(a) of this section; and

(b) Submit the request to the official custodian of protection and permanency records as specified in subsection (1)(c) of this section.

(3) The official custodian of protection and permanency records shall:

(a) Respond to the request for disclosure of protection and permanency records in accordance with KRS 61.880(1); and

(b) Allow the disclosure of protection and permanency records in accordance with 45 C.F.R. 164.524(b) and KRS 61.872, unless denied in accordance with 45 C.F.R. 164.524(d) or KRS 61.878(1).

Section 4. Appeals. A person denied access to records shall have appeal rights in accordance with 45 C.F.R. 164.524(d)(4), or KRS 61.880 and 61.882.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-010, Open Records Request, edition 6/04";

(b) "CHFS-305, Authorization for Disclosure of Protected Health Information, edition 6/04";
and

(c) "CHFS-305A, Authorization for Disclosure of Psychotherapy Information, edition 6/04".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m. (30 Ky.R. 1156; 1561; 2587; eff. 1-5-2004; 31 Ky.R. 362; eff. 8-24-2004; TAm eff. 1-27-2006.)